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John Engler, Governor

Department of Consumer & Industry Services  
Kathleen M. Wilbur, Director

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December 22, 1999

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Dear YYY:

This letter is in reply to your letter dated November 2, 1999. In your letter you requested that the Bureau concur in your conclusion that a "state-chartered, federally insured credit union's use of multiple names is allowable so long as the credit union implements reasonable measures to ensure that members and others are not confused or misled in their dealings with the credit union." For the reasons that follow, the Bureau cannot concur in your conclusion.

The Interagency Statement of May 1, 1998<sup>1</sup> and the NCUA Letter to Credit Unions No. 99-CU-17 are not authorities for the adoption of trade names. They are simple suggested guidelines that financial institutions "should take ... to ensure that members and others are not confused or misled in their dealings with the ..." institution. The regulation of trade names is a matter of state law for all insured depository institutions, whether state or federally chartered.

The Office of the Comptroller of the Currency has stated that:

"[T]he OCC's policy on this matter is that the **naming of a national bank, or of a branch office of a national bank, is primarily a business decision of the bank, subject to applicable state law.** However, should the OCC determine that a national bank's name or advertising is so misleading or confusing as to constitute an unsafe or unsound practice, it may initiate enforcement action under 12 U.S.C. 1818(b)."<sup>2</sup>

The predecessor of the Office of Thrift Supervision has acknowledged that:

The regulations for **Federally chartered institutions governing corporate titles, 12 C.F.R. § 543.1, are silent as to the adoption of trade names.** However, the Board formally acknowledged the practice of shortening corporate titles, when it promulgated Section 543.1. Furthermore, in the preamble to Section 543.1, the Board affirmatively indicated that it had no intention to regulate to prohibit this common practice. 49 FR 19029, 19030 (May 4, 1984). Whereas the corporate title provisions are silent as to which must be included in the trade names, we are of the opinion that trade names adopted by Federal institutions should conform

<sup>1</sup> See, FDIC, Financial Institution Letter 46-98, (May 1, 1998).

<sup>2</sup> Office of the Comptroller of the Currency, General Counsel Letter, *Proposed Branch Advertising and Naming Rule/7 Tex. Admin. Code* § 3.92, p 5 (June 9, 1995).

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December 22, 1999

Page 2

to the provisions promulgated by the Board for accurate advertising, 12 C.F.R. § 563.27(b), so as not to misrepresent the nature of the institution.<sup>3</sup>

The National Credit Union Administration has stated in its Interpretive Ruling and Policy Statement 99-1, Chartering and Field of Membership Policy, in pertinent part, that:

“It is the responsibility of the federal credit union organizers or officials of an existing credit union to ensure that the proposed **federal credit union name or federal credit union name change does not constitute an infringement** on the name of any corporation in its trade area. This responsibility also includes researching any service marks or trademarks used by any other corporation (including credit unions) in its trade area.”<sup>4</sup>

Clearly, none of the federal regulatory agencies have issued any preemptive regulations expressly authorizing or prohibiting the use of trade names under federal law. In fact, the FDIC, Federal Reserve Board, OTS, and OCC do not have any authority to authorize or formally approve the name or trade name of any state chartered financial institution. Therefore, the question to be addressed is whether Michigan law allows depository financial institutions to use trade names.

Your letter states that “a Michigan credit union’s use of an assumed name is entirely consistent with Michigan law on the use of assumed name. (MCLA § 445.1 *et seq.*)” We cannot agree with this statement. Michigan’s assumed name statute<sup>5</sup> applies to “persons” that are defined to exclude corporations and limited partnerships.<sup>6</sup> Michigan chartered credit unions are incorporated entities and, therefore, are not within the purview of the assumed name statute.<sup>7</sup>

Michigan’s several depository chartering acts contain various provisions regarding the naming of institutions. In the case of a Michigan chartered credit union, the Credit Union Act<sup>8</sup> leaves the selection of a name to the credit union. However, the Commissioner must approve the name selected.

Section 1 of the Credit Union Act states, in pertinent part, that:

“A credit union is organized in the following manner:

“(a) The applicants shall file an application on forms furnished by the commissioner. The application shall state all of the following:

“(1) The **name** and location of the proposed credit union.

“(c) ... The approval to organize a credit union is discretionary with the commissioner.

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<sup>3</sup> Federal Home Loan Bank Board, General Counsel Letter, *Liberty Federal savings and Loan Association Randallstown, Maryland; Corporate Title*, p 1 (February 17, 1988) (emphasis added).

<sup>4</sup> Organization and Operations of Federal Credit Unions, 63 Fed Reg 71,998 (Dec 30, 1998) (to be codified, in part, at 12 CFR 701.1).

<sup>5</sup> MCL 445.1, *et seq.*; MSA 19.821, *et seq.*

<sup>6</sup> MCL 445.1(4)(a); MSA 19.821(4)(a).

<sup>7</sup> MCL 490.1a(b); MSA 23.481(1)(b).

<sup>8</sup> MCL 490.1, *et seq.*; MSA 23.481, *et seq.*

YYY

December 22, 1999

Page 3

“(d) The commissioner shall notify the applicants of his or her decision. If the decision is favorable, he or she shall issue in duplicate certificates of organization and approved bylaws.”<sup>9</sup>

Other sections of the Credit Union Act demonstrate that the act only contemplates the use of one name by a credit union. For instance, section 3 of the Credit Union Act states that:

“(2) A credit union may not use the word "corporate" or the words "corporate central" immediately before the words " credit union" in its name unless it is a corporate central credit union organized under this act, the laws of another state or territory of the United States, or the laws of the United States.”<sup>10</sup>

Based on the foregoing it is clear that the Legislature contemplated that Michigan’s credit unions would operate under one name. Likewise, it is clear that the statements espoused by the federal regulatory agencies are not authorities for the use trade names. Therefore, I must advise you that the Bureau does not concur in your conclusion that a state-chartered credit union is permitted to use multiple trade names.

Sincerely,

/s/

Roger W. Little, Deputy Commissioner  
Credit Union Division

Cc: G. Mielock  
P. Tautkus  
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<sup>9</sup> MCL 490.1; MSA 23.481 (emphasis added).

<sup>10</sup> MCL 490.3; MSA 23.483.